IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.3727 of 2006

All India Shri Shivaji
Memorial Society & anr. Petitioners

Vs.

Mr.Bharat Narayan Desale & ors. Respondents

Mr.P.K.Rele, Sr.Counsel with Mr.Rajesh P. Rele and
Mr.Piyush Shah for petitioners.

Mr.A.M.Joshi for Resp.no.1.

Mr.A.A.Palekar, AGP for Resp.no.2.

CORAM: B.H.MARLAPALLE,J.

August 31, 2006.

P.C.

1. Heard Mr.Rele, the learned Senior Counsel instructed by Mr.Piyush Shah, the learned counsel for the petitioners and Mr.Joshi, the learned counsel for Respondent no.1.

2. Rule. Respondent no.3 is not a necessary party and hence be deleted forthwith. Mr.Joshi waives service for the Respondent No.1 and the

learned APP waives service for the Respondent No.2.

3. By consent of the parties the petition is taken up for final hearing forthwith.

4. The petitioner no.1 is a Society registered under the Societies Registration Act, 1860 and is also a Public Charitable Trust within the meaning of the Bombay Public Trust Act, 1950. It is running and managing amongst a number of schools, colleges, and Industrial Training Centres within the District at Pune, it runs the 2nd petitioner i.e. the Industrial Training Centre at Bori Bhadak in Taluka Daund in Pune District which is run on non-grant-in-aid basis. The said Training Centre is running and conducting vocational courses of technical trades like Turner, Fitter, Mechanic and Electronics etc. The respondent no.1 came to be appointed as an Instructor in the trade of Electronics with effect from 1/8/1991 by the petitioner no.1 and at the petitioner no.2 - Training Centre. He was given the work of group instructor and in addition was put in charge of the bus service as per the letter dated 25/9/2001. On 5/4/2002 he collected an amount of Rs.2,206/- towards the bus charges for the month of March 2002 but failed to

remit the said amount with the office of petitioner no.1 - Society almost for more than a month. By the letter dated 9/5/2002 he was called upon to deposit the said amount and he did so on or about 14/5/2002. He was, therefore, issued a letter dated 21/5/2002 calling upon him to submit his explanation for the delay in depositing the amount and as he failed to furnish any explanation, a charge-sheet cum show cause notice dated 10/6/2002 was issued to him. Simultaneously on assessing his attendance record for the period from January to May 2002, another charge-sheet was issued for remaining absent unauthorisedly for a period of 85 days. So far as the charge of absenteeism is concerned by his letter dated 13/6/2002 he furnished his explanation and admitted that he remained absent on account of domestic problems and also claimed that oral intimation to some colleagues was given by him. However, on the charge of misappropriation of the Society's funds for a period of about forty days while admitting that there was a delay in depositing, he claimed that the Head Master / Principal was also responsible for the said delay and it was as per the advice of the said Principal that the delay was caused in depositing the amount. The petitioner no.1

decided to hold an enquiry into both the charge-sheets and an enquiry committee was constituted for which the respondent nominated his nominee but did not remain present in the enquiry proceedings. The other two members of the enquiry committee held the respondent guilty on both the counts and ultimately by the order dated 23/12/2002 he was dismissed from service by way of punishment and consequently the respondent approached the School Tribunal by filing Appeal No.158 of 2002 which was opposed by the petitioners by their written statement.

5. Vide its judgment and order dated 21/3/2006 the School Tribunal was pleased to allow the appeal and the order of dismissal was set aside. The appellant has been directed to be reinstated in service as Instructor and with full backwages as well as consequential benefits with effect from 21/12/2002. The State Government has been directed to pay the backwages by deducting from the grants due and payable or that may become due due and payable in future to the management. Hence this petition, which is treated as the one filed under Article 227 of the Constitution.

6. The School Tribunal held that the action of the management in dismissing the appellant by way of punishment was illegal because, there was breach of the provisions of Rule 36(1), 36(2)(a), 37(1), 37(2)(d) and 37(2)(d)(i) of the MEPS Rules, 1981. It was further observed by the School Tribunal that the termination was not in keeping with the spirit of Rules 37(4) to (6) of the Rules.

7. It must be noted that in respect of the two different charge-sheets two separate enquiries were conducted and the School Tribunal was of the view that the management ought to have conducted joint enquiry. Such an issue is not within the domain of the Tribunal while it is called upon to adjudicate the issue of dismissal from service by way of punishment. In addition there is no dispute that the show cause notice was given, explanation was called for, charge-sheet was issued, decision regarding the constitution of the enquiry committee was intimated, the delinquent employee's nominee's name was invited and he was called upon to participate in the enquiry proceedings. The view taken by the Tribunal that no resolution was passed by the management at any stage

deciding to hold an enquiry against the appellant does not meet the requirements of law. Passing such a resolution is an internal formality of the management and no prejudice could be caused to the delinquent teacher. What is necessary is that the management complies with the principles of natural justice while initiating and conducting disciplinary proceedings against the delinquent teacher. Thus the findings of the Tribunal that Rule 36(1) was not followed are unsustainable.

8. So far as the requirements of Rule 36(2)(a) are concerned, the record does show that an Awardee teacher was not on the enquiry committee and, therefore, the enquiry stood vitiated. Once it is held that the enquiry stood vitiated on account of its infirm constitution, it was not necessary and even it is not necessary now to look into the compliance of Rule 37 (1), (2), (4), (5) and (6) of the MEPS Rules, 1981. On the sole ground that there was breach of Rule 36(2) the order of dismissal is required to be set aside.

9. However, when an enquiry is held to be vitiated on account of its illegal constitution of

the enquiry committee or the failure to follow the principles of natural justice in conducting the enquiry, the management's right to conduct a de novo enquiry remains in-tact, but under the scheme of the MEPS Act, 1977 and the MEPS Rules, 1981 the Tribunal does not have the powers to conduct a de novo enquiry or call upon the Tribunal to conduct such an enquiry as has been rightly held by a Division Bench of this Court in the case of Gurumaharaj Shikshan v. Jalindar Mahadeo Kedar **[2006 (2) Bom.C.R. 477]**. Mr.Rele, the learned Senior Counsel rightly relied upon the judgment in the case of Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Education Institution v. Educational Appellate Tribunal & anr. **[(1999) 7 SCC 332]** wherein it has been held that when the employee admits the charges levelled in a particular charge-sheet, no enquiry is necessary and the management could proceed to award appropriate punishment under the Service Rules. In the instant case this view is squarely applicable to the charge-sheet regarding absenteeism which charge was clearly admitted by the appellant. However, in respect of the second charge-sheet, though the delay in remittance of the amount is admitted, it was contended that for the said delay the Principal was

equally responsible and/or he was also a consenting party to the same. Before the School Tribunal a dual defence was addressed viz. the delay was due to oversight and the Principal was equally responsible. In these obtaining circumstances, there is no doubt that the de novo enquiry is required to be conducted in respect of the charge of misappropriation of the management's funds and depending upon the findings in such an enquiry, the management will have to decide the punishment to be awarded for both the charges together viz. the charge of absenteeism and the charge, if any, that may be proved in the fresh domestic enquiry. The management will have reconstitute the enquiry committee so as to comply with the requirements of Rules 36(2)(a) of the MEPS Rules, 1981.

10. The next important question that arises is whether the appellant-teacher is required to be reinstated pending the de novo enquiry and in this regard Mr. Rele has placed reliance on the judgment in the case between Ranjit Singh and Union of India **[2006 (109) FLR 859]** and more particularly para 23 therein which reads as under:

"23. We are, therefore, of the opinion that

> interest of justice will be subserved if the Disciplinary Authority is directed to consider the matter afresh in the light of the show cause filed by the Appellant herein before him. It will be desirable that an opportunity of personal hearing is also given to the appellant herein. We make it clear that although we are setting aside the order of Disciplinary Authority and consequently all other orders, we direct that the appellant shall be deemed to be under suspension till an appropriate order is passed by the Disciplinary Authority. The question of payment of backwages, it is directed, would depend upon the ultimate order that may be passed by the Disciplinary Authority...."

11. It would be, therefore, in the interest of justice that rather than ordering reinstatement straightway of the appellant, some alternative equitable arrangement in keeping with the Service Rules is worked out for a short period and the appellant also has a financial support to face such an enquiry.

12. In the premises, this petition succeeds partly and the impugned order of the School Tribunal is modified as under:

(a) The order of dismissal dated 23/12/2002 is hereby set aside.

(b) The petitioners are directed to conduct a de novo enquiry in respect of the charge of misappropriation of the Society's funds by constituting a fresh enquiry committee in keeping with the requirements of Rule 36(2)(a) of the MEPS Rules, 1981. The enquiry committee shall be constituted within a period of two weeks from today and the respondent - employee shall nominate his representative within one week for the said enquiry committee. Such a nomination will be in writing and to be served on the Principal - Petitioner no.2. The enquiry shall be conducted as expeditiously as possible and in any case it shall be completed by 30th November 2006. A copy of the findings of the Enquiry Committee shall be supplied to the respondent - employee calling upon him to submit his explanation, if any, within one week from its receipt. The final action as per the Rules in

respect of both the charges, if the second charge is so proved, shall be finalised by 31st December 2006.

(c) The respondent-employee shall be treated under suspension with effect from 1st April 2006 till 31st December 2006 or when the final order is communicated to him, whichever is earlier and shall be entitled for subsistence allowance as per the Rules. The amount of subsistence allowance for the period from April 2006 to August 2006 shall be released and paid to him within two weeks from today and for the remaining period it shall be paid as per the Rules.

(d) The employee is at liberty to challenge the fresh order of punishment, if any, by approaching the School Tribunal under Section 9 of the MEPS Act, 1977 and the issue of backwages etc. shall be considered by the School Tribunal from the date of original termination i.e. 26th December 2002.

(e) It is further directed that the fresh appeal, if any, shall be decided by the School Tribunal without being influenced by this order.

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13. Rule is made absolute in terms of the above with no order as to costs.

(B.H.MARLAPALLE,J.)